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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/731,258

12/09/2003

James M. Peck

VTN-632

4704

27777 7590 03/04/2009  
PHILIP S. JOHNSON  
JOHNSON & JOHNSON  
ONE JOHNSON & JOHNSON PLAZA  
NEW BRUNSWICK, NJ 08933-7003

EXAMINER

VARGOT, MATHIEU D

ART UNIT

PAPER NUMBER

1791

MAIL DATE

DELIVERY MODE

03/04/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/731,258	<b>Applicant(s)</b> PECK ET AL.	
	<b>Examiner</b> Mathieu D. Vargot	<b>Art Unit</b> 1791	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 22 December 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,7-26 and 49-51 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,7-26 and 49-51 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>2/24/09</u> .   | 6) <input type="checkbox"/> Other: _____                          |

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1. Claims 1 and 7-26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, line 6, a comma should be inserted after “polymer”. Claims 7 and 8 are dependent on now cancelled claim 6 and this needs to be corrected. Also, claims 7 and 8 call for the “PVP concentration” and it should be clear that the PVP is in fact the PVP KD90 set forth in claim 1. See also claims 19-21 for the recitation of “PVP”. Also, claims 22-26 call for a maleic anhydride additive that is not recited in claim 1, and hence these claims fail to further limit claim 1. If desired, the language can be changed to – further comprises—if an additional additive is to be claimed. Claim 10, line 2, it is unclear what “1/1% to about 5/5%” means—is this 1-5%? Claim 11, the reference to the patent applications needs to be deleted and the exact lenses set forth therefor. The way the claim reads now, it would be very ambiguous as to exactly what lenses are encompassed.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 49-51 are rejected under 35 U.S.C. 103(a) as being unpatentable over British Patent Application 2,078,760 in view of Morinaga et al (see Examples 1-3)

British -760 is applied for reasons of record as set forth in paragraph 4 of the previous action, the primary reference teaching the basic claimed package lacking a

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disclosure of the surface roughness of the package. Morinaga et al teaches that molds to make plastic parts with an attractive appearance and excellent feel—ie, smoothness—would have average surface roughness values of .5 to 2.0 microns, so that the products made therefrom would also have this roughness. It is submitted that the instant surface roughness is within the purview of the art in making plastic parts as taught in Morinaga et al and that one of ordinary skill in the art would have found such an obvious surface roughness for the package of British -760 to impart to same an attractive and smooth appearance.

3.Claims 1 and 7-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese document 52-93398 in view of Neeffe (see col. 2, lines 36-41) essentially for reasons of record as set forth in paragraph 5 of the last office action with these additional comments.

While it is noted that Japanese -398 does not disclose a particular molecular weight for the PVP, it is submitted that such would have been well within the skill level of the art. One of ordinary skill in the art knows that typical molecular weights for various polymers and to employ a conventional molecular weight polymer is surely obvious.

4.Claims 15-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese document 52-93398 in view of Neeffe (see col. 2, lines 36-41) and Morinaga et al (see Examples 1-3).

Japanese -398 and Neeffe are applied for reasons of record, the references disclosing the basic claimed package lacking essentially the surface roughness of the

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package. Morinaga et al is applied for reasons of record as set forth in paragraph 2, supra, the reference teaching plastic molded parts with the instant roughness. Based on the teachings of Morinaga et al, it would have been obvious to have made the package of British -760 with such a roughness to impart to the package an attractive and smooth appearance.

5. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

In view of the amendment to claim 1, the 102 rejection on claims 1 and 11-14 has been dropped. However, it is believed that a valid 103 rejection exists against all the claims. Applicant insists that British -760 does not roughen the surface of the container. However, as disclosed by Morinaga et al, the instant surface roughness is well within the purview of the art and would have been an obvious "as-molded" roughness for the container of British -760—ie, no surface roughening would be necessary. Clearly, the surface roughness of a molded plastic product depends on the surface roughness of the mold and Morinaga et al teaches that the instant surface roughness is conventional in the art when making plastic parts that look good and are fairly smooth, but do not require optical smoothness. It is maintained that the instant surface roughness would have been obvious in either of British -760 or Japanese -398 when taken in conjunction with the disclosure of Morinaga et al.

It should be noted that Neeffe is only being applied to show the different methods by which an additive would be compounded in an article, not the particular article or additive. It is submitted that based on the teaching of Neeffe, one of ordinary skill in the

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art would have found it obvious to have compounded the PVP additive in Japanese - 398, in lieu of simply forming a layer on the surface as disclosed in Japanese -398.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mathieu D. Vargot whose telephone number is 571 272-1211. The examiner can normally be reached on Mon-Fri from 9 to 6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Johnson, can be reached on 571 272-1176. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

M. Vargot  
March 1, 2009

/Mathieu D. Vargot/  
Primary Examiner, Art Unit 1791